

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re: BRIDGESTONE/FIRESTONE,
INC., ATX, ATX II, and WILDERNESS
TIRES PRODUCTS LIABILITY
LITIGATION

MAUREEN WHITE, Plaintiff,

v.

BRIDGESTONE/FIRESTONE, INC., et al.,
Defendants.

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Master File No. IP 00-9373-C-B/S

MDL No. 1373

(centralized before Hon. Sarah Evans

Barker, Judge)

Individual Case No. IP 01-5209-C-B/S

ORDER ON MOTION TO REMAND

Before the Court is Motion to Remand Removed Action (“Motion to Remand”) filed by plaintiff Maureen White. For the reasons set forth below, that motion is DENIED.

Discussion

Maureen White originally filed this personal injury action against Bridgestone/Firestone, Inc. and Ford Motor Company (“Ford”) in Texas state court. Ford then removed the action to the Eastern District of Texas, and it was thereafter transferred to this Court by the Judicial Panel on Multidistrict Litigation. At the time of

transfer, the plaintiff had filed, and both the plaintiff and Ford had briefed,¹ a motion to remand this case to the Texas state court.

The defendants removed this action solely on the basis of diversity jurisdiction. 28 U.S.C. § 1332. Ms. White agrees that the parties' citizenship is completely diverse. She maintains in her Motion for Remand, however, that the \$75,000 amount in controversy requirement has not been met.

Texas law prohibits plaintiffs from pleading for specific amounts in cases involving unliquidated damages, and Ms. White's complaint does not expressly request a specific amount. Her complaint does, however, include the following recitation:

The court has jurisdiction of this claim, the amount in controversy exceeding the minimum jurisdictional limits of this court but being less than the sum of \$75,000.00, exclusive of interest and costs....Removal to federal court, therefore, would be done fraudulently and in the most blatant and egregious bad faith.

Plaintiff's Original Petition ¶ 4. The complaint further alleges that Ms. White has sustained "personal injuries, including pain, suffering, and mental anguish, as well as property damage and economic loss" as a result of two Firestone tire failures on two different Ford Explorers, one of which involved a rollover crash and "totalling" of the

¹The parties briefed the remand issue under the law of the Fifth Circuit. Although we have determined that the law of the Seventh Circuit applies to the remand motions to be decided in this MDL (see, e.g., Halkett v. Bridgestone/Firestone, Inc., et al., Cause No. IP 00-5014-C-B/S, Order on Motion to Remand dated January 25, 2001), we do not find it necessary to request supplemental briefing. The law of the Seventh Circuit applicable to the issue presented by this motion is well-known to the Court and, in any event, is not materially different from the law of the Fifth Circuit.

first Explorer. Id. ¶ 6. She seeks, among other things, compensatory damages, treble damages under the Texas Deceptive Trade Practices Act for her economic damages and mental anguish, attorney fees and costs, and “all such other relief as may be appropriate under the common law and the statutes of Texas and other relevant states of the Union.” Id. ¶ 15.

Along with her Motion to Remand, Ms. White has submitted an affidavit (Motion to Remand Exhibit A) in which she declares that her medical expenses did not exceed \$2000, her property damage did not exceed \$8500, her lost earnings did not exceed \$2500, and the diminished value of her replacement Ford Explorer does not exceed \$10,000. She further maintains that she did “not originally and will not seek damages for this claim in excess of \$75,000....”

The first question presented by these facts is the effect of Ms. White’s allegation in her complaint that the amount in controversy does not exceed \$75,000. In re Shell Oil Co., 970 F.2d 355 (7th Cir. 1992), presented a nearly identical question. Because the ceiling on the damages requested in that case was improper under state law, it was not binding. Id. at 357 (reprinting district court order). The same conclusion results here, because Ms. White’s allegation limiting the amount in controversy is ineffective under Texas law. See De Aguilar v. Boeing Co., 47 F.3d 1404, 1412-13 (5th Cir. 1995). Second, the Seventh Circuit made clear in Shell Oil that the plaintiff’s post-removal affidavit cannot defeat federal jurisdiction that existed at the time of removal. Id. at 356.

Ms. White's Motion to Remand does, however, shift to the defendants the burden of coming forward with "competent proof" to establish at least a "reasonable probability" that the amount in controversy requirement is satisfied. NLFC v. Devcom Mid-America, Inc., 45 F.3d 231, 237 (7th Cir. 1995); King v. Wal-Mart Stores, Inc., 940 F.Supp. 213, 216 (S.D. Ind. 1996); Reason v. General Motors Corp., 896 F.Supp. 829, 834 (S.D. Ind. 1995).

Ford claims that its burden of proof is met because (1) it is facially apparent from the plaintiff's prayer for relief that she seeks an amount over \$75,000, and (2) the plaintiff's own enumeration of her damages in her affidavit demonstrates that the amount in controversy exceeds \$75,000. The Court agrees. Ms. White's affidavit² sets her economic losses at not more than \$21,000, or \$63,000 after the trebling requested in the complaint. She also seeks recovery of medical expenses not exceeding \$2000, treble damages for pain, suffering, and mental anguish related to the two tire failures (one of which resulted in a rollover crash), attorney fees and costs, and "revocation of acceptance and full refund." See Plaintiff's Original Petition ¶ 15. Finally, the complaint contains allegations consistent with a request for punitive damages. See, e.g., id. ¶¶ 5, 8, 9, 13, and 14. These facts demonstrate to this Court a reasonable probability that the amount in controversy in this case exceeds \$75,000.

²Although Ms. White's post-removal affidavit cannot be used to defeat jurisdiction, nothing precludes Ford from relying on it to meet its burden of proof on the amount in controversy.

For these reasons, the plaintiff's Motion to Remand is DENIED.

It is so ORDERED this _____ day of May, 2001.

SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

Copy to:

Irwin B. Levin
Cohen & Malad
136 North Delaware Street
P O Box 627
Indianapolis, IN 46204

William E. Winingham
Wilson Kehoe & Winingham
2859 North Meridian Street
P.O. Box 1317
Indianapolis, IN 46206-1317

Randall Riggs
Locke Reynolds LLP
201 N. Illinois St., Suite 1000
P.O. Box 44961
Indianapolis, IN 46244-0961

Daniel P. Byron
McHale Cook & Welch Pc
320 N Meridian St.
1100 Chamber of Commerce Bldg
Indianapolis, IN 46204